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ex rel Atty.-Gen. v. D. & H. Co., 213 U. S. 366, might not these companies, after having been made common carriers against their will, be denied the right to carry the products of their own wells?

CONSTITUTIONAL LAW—STERILIZATION OF CRIMINAL AS CRUEL AND UNUSUAL PUNISHMENT.—An Iowa statute authorized a surgical operation called vasectomy, to prevent procreation, to be performed on certain classes of defectives and making the operation mandatory as to criminals who have been twice convicted of a felony, is *held* unconstitutional. *Davis v. Berry et al.* (D. C. 1914) 216 Fed. 413.

Although it is clear that the court might have rested its decision entirely upon the ground that the particular statute in this case is unconstitutional as depriving one of due process of law, for the reason that it places the determination of a judicial question (whether a criminal has been twice convicted) in the hands of an administrative board at a private hearing, or upon the ground that it amounted to a bill of attainder in not granting a jury trial, yet the court does not confine itself to these reasons, but pronounces the statute invalid as providing for a cruel and unusual punishment, and it is this point which is of chief interest. The supreme court of Washington has held that a similar statute is not invalid on this ground. *State v. Feilen*, 70 Wash. 65, 41 L. R. A. (N. S.) 418, 11 MICH. L. REV. 150. The only other case involving a like statute went off upon another point. *Smith v. Board of Examiners*, (N. J.) 88 Atl. 96. See 12 MICH. L. REV. 400. In the Washington case the court laid stress on the painless character of the operation of vasectomy, apparently measuring the cruelty of the punishment by the physical pain inflicted. In the instant case the court say, comparing the operations of castration and vasectomy: "But each operation is to destroy the power of procreation. It is, of course, to follow the man during the balance of his life. The physical suffering may not be so great, but that is not the only test of cruel punishment; the humiliation, the degradation, the mental suffering are always present and known by all the public, and will follow him wheresoever he may go. This belongs to the Dark Ages." Generally, punishments have been held cruel and unusual either because they involved the tortures of barbarous times or because they were wholly and manifestly disproportionate to the offense. See *Weems v. United States*, 217 U. S. 349, and cases discussed therein. The court in the principal case adopt a somewhat novel ground for holding a punishment cruel or unusual. Obviously, the mere fact that a punishment is humiliating and life-long, is not sufficient, for this may be said of many punishments daily meted out to criminals. Is not the support for this decision to be found in the fact that the mind, without regard to the question of the pain inflicted, the enormity of the offense or the purpose of the operation, instinctively denominates as cruel and unusual a punishment that requires in this manner the mutilation of the human body and the destruction of its natural functions? The novelty of the question in both its legal and pathological aspects justifies this answer, though it may find, because of its novelty, little support in mere precedent.